

STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

EMPLOYEE MISCLASSIFICATION ADVISORY
TASK FORCE MEETING

July 26, 2012

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STONE & GEORGE COURT REPORTING
2020 Fieldstone Parkway
Suite 900 - PMB 234
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1 APPEARANCES:

2 Voting Members:

3 Kim Jefferson, Chair Designee

4 Mike Shinnick, Co-Chair Designee

5 Carolyn Lazenby

6
7 Ex Officio Members:

8 Dan Bailey

9 Nathan Burton

10 Martha Campbell

11 Jason Locke

12 Abbie Hudgens

13 Lynn Ivanick, Parliamentarian

14 James Milam

15 Randy Thomas (not present)

1 MS. JEFFERSON: The meeting
2 will please come to order. Sorry about the delay.
3 We had some technical difficulties but I think
4 we're going to work through those.

5 Good afternoon and welcome to the
6 January 26, 2012 Employee Misclassification
7 Advisory Task Force meeting. I hope that everyone
8 had a wonderful --

9 I'm sorry, Shara?

10 MS. HAMLETT: July.

11 MS. JEFFERSON: I'm sorry.
12 July. July 26, 2012 meeting. I hope that
13 everyone is enjoying the summer so far. I hope
14 you had a really good break from the last session.

15 Actually, our last meeting, January
16 the 26th, is when we prepared our first annual
17 report, and we submitted that in January as well.
18 So I hope you had a nice break, but now it's time
19 to get back to business. So we're going to go
20 ahead and find out what we need to do in order to
21 prepare for the next annual report which is due in
22 actually February 2013.

23 At this time, we'll have the roll
24 call by Ms. Lynn Ivanick.

25 MS. IVANICK: July 26, 2012,

1 Kim Jefferson.

2 MS. JEFFERSON: Present.

3 MS. IVANICK: Carolyn Lazenby.

4 MS. LAZENBY: Here.

5 MS. IVANICK: Mike Shinnick.

6 MR. SHINNICK: Here.

7 MS. IVANICK: Daniel Bailey.

8 MR. BAILEY: Here.

9 MS. IVANICK: Nathan Burton.

10 MR. BURTON: Here.

11 MS. IVANICK: Martha Campbell.

12 MS. CAMPBELL: Here.

13 MS. IVANICK: Jason Locke.

14 MR. LOCKE: Here.

15 MS. IVANICK: Abbie Hudgens.

16 MS. HUDGENS: Here.

17 MS. IVANICK: Myself. James

18 Milam.

19 MR. MILAM: Here.

20 MS. IVANICK: Randy Thomas.

21 (No response.)

22 MS. IVANICK: Madam Chair, you
23 have three of three voting members, a quorum, and
24 10 of 11 total members in attendance.

25 MS. JEFFERSON: Thank you,

1 Ms. Ivanick.

2 The next item on the agenda is the
3 January 26, 2012 meeting minutes. The meeting
4 minutes can be found on the website. I'll provide
5 that link a little later on in the meeting. And
6 you can go to that particular website to find any
7 of the meeting minutes. And I suggest that you
8 read those prior to the scheduled meetings.

9 And at this time, may we have a
10 motion for the adoption of the January 26, 2012
11 meeting minutes?

12 MR. SHINNICK: I make that
13 motion.

14 MS. LAZENBY: Second.

15 MS. IVANICK: So we have a
16 motion by Mike Shinnick to adopt the January 26,
17 2012 meeting minutes, seconded by Carolyn Lazenby.
18 Do we have any discussion?

19 (No verbal response.)

20 MS. IVANICK: All those in
21 favor?

22 (Affirmative response.)

23 MS. IVANICK: All opposed?

24 (No verbal response.)

25 MS. IVANICK: You have three

1 of three "ayes" and the motion passes.

2 MS. JEFFERSON: Thank you.

3 The next item on the agenda is the July 26th, 2012
4 agenda. Please refer to your agenda. And at this
5 time, I would like to have a motion to adopt the
6 July 26, 2012 agenda.

7 MS. LAZENBY: I make that
8 motion.

9 MR. SHINNICK: I second.

10 MS. IVANICK: So a motion has
11 been made to adopt the July 26, 2012 agenda. It
12 has properly been seconded. Is there any
13 discussion?

14 (No verbal response.)

15 MS. IVANICK: Are we ready for
16 the question?

17 (No verbal response.)

18 MS. IVANICK: Those in favor
19 say "aye."

20 (Affirmative response.)

21 MS. IVANICK: Those opposed.

22 (No verbal response.)

23 MS. IVANICK: You have three
24 "ayes" and the motion carries.

25 MS. JEFFERSON: Thank you.

1 And next on the agenda is the Public Comments
2 segment. At this time, if you would like to make
3 a public comment, feel free to approach the
4 podium. Do we have anyone who would like to make
5 a public statement at this time?

6 (No verbal response.)

7 MS. JEFFERSON: If not, we'll
8 move on down the agenda.

9 Before we move on to the committee
10 reports, I would just like to update you as to
11 what the task force has done since the last time
12 we met. Although we have not met as a task force,
13 an entire task force, committee members have met
14 and held, actually, committee meetings.

15 In addition to that, we have been
16 very productive and we've -- if you take a look at
17 your information, your 2012 Annual Report, take a
18 look at page 2. And on page 2 you'll see the
19 future action items. Do you see that the pages
20 are numbered? Okay. If you take a look at
21 Number 1, educate employers and employees.
22 Establish a website including a fraud tip line and
23 tip form.

24 As we indicated there, the website
25 was operational at the time we completed the

1 report; however -- it's fully operational at this
2 particular point -- in addition to the website
3 being operational, we did create a tip form that
4 allows persons who want to report employee
5 misclassification to complete that form.

6 I would say that we've received
7 between 20 to 25 tip forms thus far,
8 approximately. I can give you a definitive count
9 at a later date, but we have received information
10 from the public, whereas they're reporting other
11 employers for misclassifying workers as
12 independent contractors instead of employees. So
13 we're really excited about that.

14 In addition, we published the fraud
15 tip line. And our help desk -- we have a 1-800
16 help desk within the workers' comp division.
17 They're answering telephone calls on employee
18 misclassification issues. And all of that was
19 established, prepared, reviewed by the legal
20 committee chair, Dan Bailey; insurance committee
21 chair, Mike Shinnick; and the education committee
22 chair, Lynn Ivanick, along with the education
23 committee and the members.

24 The second thing that we've done is
25 to train six of seven investigators within the

1 compliance program. And previously we have three
2 different programs within workers' compensation
3 that handled compliance. Recently, those programs
4 have been placed under one program. It's called
5 the compliance program. Those programs include
6 the Uninsured Employers Fund, the Employee
7 Misclassification Education and Enforcement Fund,
8 more recently, the penalty program. So all of
9 those programs fall under one umbrella, and it's
10 called the compliance program. And in May, this
11 past May, we trained the investigators, six of
12 seven.

13 One investigator has not been
14 trained. He was out on leave during that time,
15 but we hope to have him trained before the end of
16 year.

17 Number 3, we've established an
18 investigator's round table. And what that is,
19 that comprises all of the investigators and
20 auditors within the Tennessee Department of Labor
21 and Workforce Development. And what they do is
22 come together and they exchange their ideas, their
23 investigatives, strategies, and techniques. And
24 they all compare notes, basically. And so what
25 they're going to do is to provide a report at the

1 end of the year so we can use the information that
2 they come up with in our annual report. Which I
3 think that will be very helpful to us.

4 We're constantly working to level the
5 playing field. Of course, that's going to take
6 time, effort, creativity. We're going to have to
7 come up with different methods to do that.

8 But what we're doing now is
9 investigating employees. We have investigators
10 who go out into the field. They're looking at all
11 the issues involved with employee
12 misclassification. And we're going to continue to
13 do that. We're sending certified letters to
14 employers. We're actually performing on-site
15 inspections. And in addition to that, we're just
16 doing a number of things. We're contacting
17 insurance agents and carriers. If we find that
18 employee misclassification exists -- because, you
19 know, our hands are tied, we are limited in what
20 we can do -- so we contact the insurance carriers
21 and the agents to put them on notice, basically.

22 And we're also making referrals.
23 We're making referrals to Commerce & Insurance, to
24 the Board of Licensing Contractors, and just to
25 various agencies that this matter affects. And

1 they're making referrals to our agency as well.
2 So we're really excited about that.

3 Fraud detection, that's the last item
4 that's listed there. On July the 16th, Mike
5 Shinnick and Dan Bailey coordinated presentations
6 for three vendors. And the three vendors that
7 partook in those various presentations were Kevin
8 Hale, Insurance Technology; Todd Hawkins, Thomson
9 Reuters; and John McCarthy with Risk Metrics
10 Corporation. And the committees will further
11 discuss those vendors during your presentations.

12 Last week I spoke with Jeff Garner.
13 He's the program administrator for the workers'
14 classification protection unit in Maryland. And
15 what he's doing is preparing a matrix. And this
16 matrix is going to be comprised of participating
17 states. And all these states are submitting
18 information to him and explaining to him what
19 their state is doing in the way of employee
20 misclassification. For example, are there certain
21 presumptions that exist? Do these states have
22 stop-work orders in place already? Do they have
23 administrative penalties?

24 He just wants us to take a look at
25 other states and wants -- well, actually, I'm

1 interested in looking at that matrix as well, and
2 I'm sure that you all are, too, to see how we
3 compare with other states. So that's basically
4 what that's for. And we'll continue to reach out
5 to other states just to make sure that we're on
6 the same page. And even if we're not, we can just
7 compare our notes with what they're doing. And
8 we've previously reached out to Florida, and
9 Florida has been really helpful.

10 And also, in talking with Mr. Garner,
11 he told me about, actually, an outreach and
12 education section that he supervises. And I asked
13 Lynn Ivanick to speak with him and his assistant
14 so that we can actually receive some type of
15 direction and maybe use some of their techniques
16 and some of their strategies.

17 The next thing on the agenda are the
18 committee reports. And the committee reports will
19 address Tennessee Code Annotated Section 50-6-919,
20 Subsection (b) 7 through 13. Please refer to the
21 committee reports. If you didn't get a copy of
22 the reports, they're on the table closest to the
23 door.

24 Also, you should have the issues for
25 consideration. And these are issues that the

1 various committees are taking into consideration
2 as they go forth and hold and host their committee
3 meetings. They take those things into
4 consideration. And these are the items that will
5 be listed in the 2013 annual report.

6 So the first committee report will be
7 presented by Mr. Dan Bailey. And Dan Bailey is
8 the chair for the legal committee.

9 MR. BAILEY: Good afternoon,
10 everybody. The legal committee met June 19th.
11 And those in attendance were Ashley Arnold, Matt
12 Capece, Kevin Hale, Abbie Hudgens, Adrienne Fazio,
13 and Bob Pitts as committee members. And then also
14 present as contributors were Investigators John
15 Basford and Norm Auffhammer.

16 The three items that we were to
17 consider were paragraphs 9, 10, and 13 of
18 TCA 50-6-919(b). Paragraph 9 is whether
19 improvements are needed to facilitate the filing
20 of complaints and identify potential violators
21 including but not limited to soliciting referrals
22 and other relevant information from the public.

23 And the legal committee basically
24 submits three recommendations regarding this -- to
25 address this question. And the main

1 recommendation being that effective enforcement is
2 thought to be probably the most basic thing that
3 we need in order to instill more confidence in
4 compliant contractors who would more than likely
5 report noncompliant contractors if they felt that
6 something was actually going to be done about it.

7 The Department's current legal
8 authority, as Kim alluded to, is limited right
9 now. We can address those who do not have
10 workers' comp insurance or who are not paying
11 their unemployment insurance premiums; however,
12 the area of insurance premium avoidance and the
13 ability to issue stop-work orders are still things
14 that the Department does not have the authority to
15 do.

16 So the thinking on the first item is
17 that until the Department has greater enforcement
18 authority and starts exercising that authority,
19 that it's doubtful that the compliant contractors
20 are going to report noncompliant contractors,
21 until they feel that that enforcement mechanism is
22 in place.

23 The second recommendation is
24 utilization of effective technology to ferret out
25 potential noncompliant contractors. I think --

1 and I don't want to speak for the investigators,
2 but I think currently they probably feel somewhat
3 like they're feeling around in the dark, trying to
4 find the noncompliant contractors. Hopefully,
5 with the right technology, that will kind of, so
6 to speak, turn the lights on a little bit so that
7 your focus is more specific and direct to those
8 who would be likely engaging in employee
9 misclassification.

10 And as Kim mentioned, we did have a
11 meeting. And I want to thank Mike Shinnick for
12 coordinating this meeting with the vendors. We
13 had a meeting July 16th here at the Department and
14 three vendors presented their programs to us, as
15 far as what they can do and things of that nature.
16 And I don't know if -- I didn't know if you wanted
17 to discuss this, kind of, separately or you just
18 want me to give my opinion of what I thought of
19 it.

20 MS. JEFFERSON: That's fine.

21 MR. BAILEY: Okay. The three
22 were -- one of them was Thomson Reuters, and their
23 product is called CLEAR. And in my opinion, that
24 program is not something that's going to help us.
25 That program cannot tell us if a company had

1 workers' comp insurance or not. And without that
2 information, I don't think that that's going to be
3 an effective technology to help our investigators.

4 I think they're very -- I think that
5 program is probably more helpful to probably like
6 the TBI who are trying to find somebody or
7 something along that line. But for our purposes,
8 I didn't -- I don't think they fit our needs.

9 Risk Metrics seemed to understand the
10 situation and apparently is in other states. The
11 technology is used by, I think he said, 35 other
12 states.

13 MR. SHINNICK: Thirty-two.

14 MR. BAILEY: Thirty-two?

15 Okay. What I was unclear of is what exactly the
16 cost was. At one point, he said something about
17 doing it for free, but I took that as, like, a
18 sample. I don't think he was going to offer the
19 product free to us. But I wasn't real clear. I
20 guess that's my fault for not asking good
21 questions at the time. But it didn't come across
22 to me exactly what the cost of that product would
23 be.

24 Now, whether it would work,
25 apparently -- I think if the right information is

1 there, that would help our investigators. And the
2 presenter, John McCarthy, seemed to certainly
3 understand the issue. But I was just unclear on
4 the cost. And also with the other -- the fact
5 that it is in other states, there would be a way
6 of checking to see what kind of experience they've
7 had with it in their efforts to root out the
8 noncompliant contractors.

9 And the last one was Kevin Hale's
10 Insurance Technology. And again, Mr. Hale
11 certainly understands the problem. The
12 information that his software would give us seems
13 to be exactly the kind of information we would
14 need. His product is new, so there isn't a track
15 record with other states, at least that I'm aware
16 of, but certainly it has the right information.
17 He understands the situation and he has offered
18 his product to our Department and to the Board of
19 Licensing Contractors for us to use free. So you
20 can't beat the cost. And I like to shop Tennessee
21 whenever I can. So that's my take on the three
22 vendors that presented that day.

23 The third recommendation that we had
24 was a public outreach and awareness campaign to
25 help educate potential workers who are -- workers

1 who may potentially be working for a noncompliant
2 contractor or may go to work for a noncompliant
3 contractor.

4 And our suggestion in this area was
5 placing bilingual information on pamphlets in the
6 Tennessee career centers and the job fairs,
7 bilingual media ad campaigns, bilingual public
8 service announcements.

9 Now, the media ad campaigns, I have a
10 footnote there. It's that cost will be a factor
11 on how much, if any, of this is doable. But the
12 information on -- the bilingual information on
13 pamphlets should not be a high cost.

14 Public service announcements I
15 wouldn't think would be a high cost, or providing
16 educational information regarding these practices
17 via social media. And believe me, I am not tech
18 savvy at all and I've never been on Facebook or
19 any of that kind of stuff. But as I understand
20 it, this is the way to -- if you want to reach the
21 younger worker, that's probably the best way to go
22 about it. But how to go about that, you've got to
23 talk to somebody else.

24 Number 10, Paragraph 10, is changes in
25 the law, if any, that need to be made in order to

1 ensure that agencies represented by task force
2 members investigating the failure of employers to
3 properly classify individuals as employees under
4 their own statutory amendments or enforcement
5 mechanism have the authority to refer a matter to
6 other participating agencies for assessment of
7 potential liability under the other agency's
8 relevant statutory or administrative enforcement
9 mechanisms.

10 That seems to me to be a lot of words to
11 just say can Commerce & Insurance refer a case to
12 the Department of Labor or vice versa or to the
13 state licensing board. And there's -- no changes
14 in the law are necessary. Nothing currently in
15 the law prohibits agencies represented by task
16 force members from referring a matter to other
17 participating agencies for potential liability
18 under that agency's statutory administrative
19 enforcement mechanism.

20 And I guess I do have -- I wrote myself
21 a little question. What about TBI? Can TBI --
22 if, in the course of an investigation, TBI
23 determines, well, there may not be criminal
24 activity here but this is -- this looks like
25 they're cooking the books or working people off

1 the books, is there anything that prevents you-all
2 from sharing that with us that you know of?

3 MR. LOCKE: Nothing would
4 prevent us from sharing the information, but we
5 couldn't turn the case file over. If we had
6 documented information, we wouldn't be able to
7 share the documentation. But we certainly could
8 have a meeting and give you an overview of the
9 issues and point you in the direction that you
10 need.

11 MR. BAILEY: Okay. I was
12 unsure about that, so I wanted to ask that while
13 we were here, while we were talking about that.

14 And then the last item is Paragraph 13,
15 any other issues relevant to the employer
16 misclassification in the construction industry.
17 And basically, our recommendation there was that
18 the Department and other task force member
19 agencies contact governmental agencies and
20 attorney general's offices in the bordering states
21 to establish a referral process with them, meaning
22 noncompliant companies working in Tennessee are
23 from other states, and if they're breaking the law
24 here, they're more than likely breaking the law in
25 their home state as well.

1 And that pretty much, Madam Chair, is
2 the legal committee's report.

3 MS. JEFFERSON: Do you have
4 any questions?

5 (No verbal response.)

6 MS. JEFFERSON: All right. No
7 questions. Thank you, Mr. Bailey, for your
8 detailed report.

9 Next we'll have a report from Mike
10 Shinnick who's the chair of the insurance
11 committee.

12 MR. SHINNICK: My name is Mike
13 Shinnick. I'm the chairman of the insurance
14 committee. When Kim announced the meeting today,
15 she encouraged us, each committee, to meet and
16 evaluate Public Chapter 50-6-919, Sections 7
17 through 13, the second half of the statute. We
18 addressed the first half the first time around and
19 reported in February of this year. And so now
20 it's time to look at the second half, so we did
21 that.

22 We got together on June the 7th, and
23 we -- before we got into our discussion on those
24 components of the statute, Bob Pitts expressed a
25 concern that we've been doing this for a while as

1 a task force but enforcement -- apparently, there
2 has not been any enforcement to date of any
3 premium-avoidance types of issues. And he felt
4 like that it was a good idea for us to evaluate
5 maybe some of the impediments of not being able to
6 enforce.

7 Of course, we have recommended or we
8 have looked at some potential legislation that
9 would provide penalties. But I think what Bob is
10 really talking to here is criminal penalties as
11 opposed to civil penalties. So he expressed that
12 concern.

13 He also felt like it would be a good
14 idea to check the administration's pulse on
15 employee classifications. And, of course, I
16 encouraged him to do that at today's meeting and
17 he's not here, so I'll just relate what his
18 feelings are about that.

19 Actually, Arnold pointed out to the
20 group that there is a working group looking into
21 the workers' compensation situation and with the
22 possibility of making some recommendations to the
23 governor's office in late August. We felt like --
24 she felt like it was important to maybe take what
25 we come up with, as far as misclassification

1 issues are concerned, and consider rolling that
2 into the -- any recommendations that may come out
3 of the working group and to kind of let the
4 governor's office evaluate those at the same time.

5 Bob Pitts looked at three areas of
6 potential premium abuse that he wanted to point
7 out that were problematic. One was employees
8 being classified as independent contractors. And,
9 of course, the new law requires everybody in the
10 construction industry to be covered for workers'
11 compensation, even the independent contractors.

12 The option that they have is to
13 obtain an exemption through Nathan's office, the
14 Secretary of State's office. And that
15 exemption -- the new cost on that exemption,
16 beginning January 1, 2013, I believe, is \$50 for
17 someone that's got a license with the Department
18 of Commerce and Insurance Contractors Board and
19 \$100 if they don't have a license. So that is a
20 little bit more manageable from a cost standpoint.

21 Big issues out there are off-the-
22 books payroll. We looked at some of the things
23 that were going on in Florida last year when we
24 met as a task force. And that is a very, very
25 large problem in Florida. Whether it's that

1 significant of a problem here in Tennessee as in
2 Florida, we don't know. Not likely, but it is
3 still a very, very real problem. And so perhaps
4 at some point in time we can get a little bit
5 better handle on that and quantify it.

6 And then Bob pointed out that
7 government contracts were particularly problematic
8 as far as premium abuse. He also felt like that
9 communications could be better to the insurance
10 industry as well as to the contract -- the
11 construction industry. And maybe he can elaborate
12 on that a little bit more at the next meeting.

13 Kevin Hale is part of our insurance
14 committee. And he shared with us in our first
15 meeting some of the data that the Department of
16 Labor and Work Force Development has access to
17 through POC. And so -- I'm trying to think of
18 POC -- proof of coverage. And that information is
19 supplied free from the NCCI.

20 It's quite extensive, the type of
21 information that NCCI provides. They provide the
22 governing class code, which is the class code that
23 produces the most premium, excluding the standard
24 exception classes. Payroll, number of employees,
25 named insured, effective dates, several other key

1 components there.

2 Kevin has a program he's put together
3 for the marketplace here in Tennessee, perhaps
4 some other states as well. You can check with him
5 on that. But it utilizes a lot of the
6 proof-of-coverage information. And I think he was
7 more or less relating that that is the base, if
8 you will, for a data base system going forward,
9 that we have some good basic information that's
10 provided for us free, and we can learn from that
11 and perhaps develop a system here in Tennessee
12 that would utilize that data as well as some other
13 data to help us to identify suspects. More or
14 less produce sort of a predictive model to
15 identify suspects.

16 We did talk about the fact that there
17 are at least a couple of states that have invested
18 pretty heavily in a data base fraud system for
19 misclassification. And they are Washington and
20 Louisiana. Those systems that were developed
21 there are multimillion-dollar systems. And we may
22 or may not have the resources to do that here in
23 Tennessee, but I think we just wanted to kind of
24 survey and identify what was going on out there
25 across the country before we launch into further

1 research.

2 We agree that it made a whole lot more
3 sense to invest in a system as opposed to invest
4 in a large number of field investigators. So if
5 we develop a system that identifies suspects, a
6 predictive model, if you will, then the limited
7 resources that we have here at the Department can,
8 in a very targeted way, go after the ones that
9 appear to be milking the system.

10 As we evaluated Items 7 through 13, we
11 concluded that Item 8 should be our focus this
12 year. And Item 8 is new strategies for
13 systemically investigating the failure of
14 employers to properly classify individuals as
15 employees. And that new strategy is to explore
16 the feasibility of obtaining a fraud detection
17 software and related data bases.

18 And I will point out that that was on
19 the list that Kim had just pointed us to earlier
20 about future activities, Item Number 5 in the 2012
21 Annual Report.

22 When we provided this report to the
23 group, we had one of our members suggest that
24 there may be an issue here that we are going to
25 have to tread lightly on today. That's with

1 Kevin's involvement in our committee and
2 involvement in another committee, if he were to
3 put together a system to provide to the State, he
4 could possibly have some advantage by being on
5 these various committees.

6 So we had agreed on kind of a conflict-
7 of-interest policy, as far as Kevin's involvement
8 in the future, that fair game would be any
9 discussion within our committee of his system.
10 Determination of what our needs should be, setting
11 specifications, that was all fair game and that
12 was fine for him to be involved in.

13 As far as things that he would need to
14 excuse himself for -- and that is the review of
15 other systems, critiquing of other systems, and
16 voting on product recommendations -- and Kevin was
17 very agreeable to these criteria that we set to
18 avoid conflict of interest issues. And the
19 committee chairs will use their discretions in
20 identifying and managing other areas of conflict
21 that they deem relevant. So that is the decision
22 that was made by our committee on June the 7th.

23 We did, as Dan said, have a meeting with
24 three potential vendors. Kevin was one of those.
25 He was the second that presented Insurance

1 Technology. Risk Metrics was the first, John
2 McCarthy. He was from Boca Raton, Florida, and is
3 an ex-NCCI executive. And so I think his company
4 has been around for about ten years.

5 Of the systems that we looked at or that
6 were presented to us, his was the most
7 comprehensive. He utilized proof-of-coverage data
8 in his as well as Dun & Bradstreet information to
9 kind of triangulate the data to identify suspects.

10 As Dan said, we didn't get a price.
11 It's kind of preliminary on that. We can
12 certainly get back with him and kind of get a feel
13 for what that might look like.

14 Kevin's system is kind of what I would
15 refer to as a work in progress. He hasn't
16 developed -- he's got his own system that we've
17 talked about him making available to the
18 marketplace, but in terms of bringing other data
19 in and programming it in such a way that it could
20 identify suspects, we're not there yet -- he's not
21 there yet, as I understand it.

22 And then the last one was CLEAR, Thomson
23 Reuters. That was more or less a government fraud
24 system. And the TBI may, in fact, use that. I'm
25 not really sure. But that was a system that, I

1 guess, looked at public filings, public
2 information, and pulled all of that information
3 together.

4 That might be good to -- if you've got a
5 suspect and you want to dig more deeply into that
6 suspect, that might be a good program to look at.
7 I think the cost of that would be relatively
8 reasonable and particularly if you just had one or
9 two folks at the Department that used the system.
10 But here again, that's not a broad data base to
11 identify suspects.

12 So that kind of runs the gamut. And
13 certainly we have not exhausted anywhere near, you
14 know, what we want to look at in terms of other
15 types of systems. It might be very wise for us to
16 look at what was done in Louisiana and Washington.
17 Maybe not necessarily that we're going to spend
18 that kind of money, three or four million dollars
19 for a system, but we might be able to learn from
20 what they share with us.

21 Do you have any questions concerning
22 this committee report?

23 (No verbal response.)

24 MS. JEFFERSON: No questions.
25 Thank you for your thorough report. We appreciate

1 that.

2 At this time, I think this is a
3 really good time for us to take a break. Is there
4 a motion?

5 MS. LAZENBY: I make a motion.

6 MR. SHINNICK: I second it.

7 MS. JEFFERSON: All in favor?

8 (Affirmative response.)

9 MS. JEFFERSON: The motion
10 carries.

11 (Recess observed.)

12 MS. JEFFERSON: Next on the
13 agenda is the research and resource committee, and
14 Carolyn Lazenby is the chair.

15 MS. LAZENBY: I know that
16 we're getting back to order. The research and
17 resource committee met on June 27th. We had -- on
18 the committee, present was Dr. Bill Canak, Shara
19 Hamlett, Bill Mason, Jenny Taylor, and Nathan
20 Burton.

21 We were covering the statute for the
22 Items 7 through 13, like many of the others. And
23 7 and 13 were pretty similar to each other, so
24 while we were brainstorming, we sort of covered a
25 lot of them and combined the responses together.

1 On 7 through 9 -- of course, 7 covers
2 the issues of investigative and enforcement
3 resources, the need to use media information and
4 technology -- and that can be shared between
5 agencies -- and ordered access information
6 reported to NCCI, and using fraud detection
7 software.

8 And in part 8, we're looking for new
9 strategies to thoroughly investigate. And then in
10 9, the statute asks whether improvements were
11 needed to simplify filing complaints.

12 And so on page 2 of the report, the
13 response from our committee, one of the
14 recommendations was to use data mining. And this
15 seems to be a really great source for low-cost
16 investigative measures. It allows investigators
17 to link up to different data bases to identify red
18 flags.

19 One good example was the data will
20 capture a business that will list if they have 20
21 trucks. But on everything else, it will say they
22 have no employees. So that sends up a red flag
23 that that's something that needs to be looked at.

24 It was also -- one of our
25 recommendations was to encourage the use of

1 another process for enforcement in lieu of just
2 having only a complaint-driven investigation,
3 which was primarily referrals from others that got
4 underbid and from attorneys. So this would be a
5 good source to go after the violators before a
6 complaint gets here.

7 As far as this data base, it could be
8 modeled after other states. And so one of our
9 assignments would be -- is to check with the state
10 of Washington to see if they may 'share their
11 process.

12 We're also recommending offering
13 incentives and protection to those reporting the
14 violations. And we have seen where some states do
15 this, and so that's something we're going to look
16 at, is to see how we can also do the same thing,
17 offer immunity to someone such as an illegal alien
18 who has been treated as an employee -- as an
19 independent contractor when they're in fact an
20 employee.

21 And doing this, we have other ways to
22 compensate -- to come up with ways to compensate
23 others to come forward. So that's something we're
24 looking at.

25 Another recommendation was to draw

1 local government into these efforts by using their
2 resources and expertise. It may be just that we
3 need to make local government aware of all the
4 issues of employee misclassification and the costs
5 related to those types of violations that more
6 than likely they'll be on board with this. It
7 will be part of their community. It will better
8 their community. And so we're looking for
9 developing a policy to see about getting this up
10 and going.

11 We've already learned that
12 investigators, currently, already have a good
13 relationship with local government. And so this
14 will just give another means to access the local
15 building permits. And a lot of these are already
16 available online. But officials have firsthand
17 knowledge of when projects start going up, so they
18 can alert investigators to do a random check.

19 And random checks is something that
20 we were looking at. It also offers a low-cost
21 enforcement. So we're looking at developing a
22 policy for that. Another recommendation is maybe
23 have one staff member to perform these searches.
24 And it might be that these type of checks could
25 pay for the position itself, depending on how much

1 can be found. They can use the data bases, Google
2 other state and local agencies like unemployment
3 insurance and local codes, permits online, the Dun
4 & Bradstreet, and then utilize a lot of the free
5 fraud protection software that we've been looking
6 at.

7 And then one of the assignments that
8 we're also looking at is to research the state of
9 Oklahoma's process of finding you are required to
10 share and create a data base. So that's something
11 we're looking at.

12 Another way to keep the cost down is
13 to utilize students at technical school
14 departments. And this was similar to another
15 school that did this and came up with, designed
16 and created, a low-cost data base.

17 When we looked at the next statute,
18 on Number 10, of course, this was whether law
19 changes were needed. And again, our committee's
20 response is on page 2. And we, on the committee,
21 felt like there needed to be a legal standard
22 developed since there are so many definitions of
23 an employee and independent contractor. The
24 workers' compensation law has one; unemployment
25 insurance has one; federal government, IRS, has a

1 definition; and then the construction services
2 provider exemption also has a definition.

3 So we want to get a legal standard
4 developed and then use this for addressing some of
5 the other items in 11 through 13 that we're going
6 to do next.

7 We do mention maybe the possibility
8 of a law change to require the owner -- the
9 ownership information to be provided when you form
10 a corporation or LLC. Right now, you do not have
11 to list who owns the corporation. So having this
12 and then also later on having a data base to match
13 up with those, it would be a way to prohibit them
14 from closing one company down and starting up
15 another.

16 And then lastly, the committee
17 addressed the Items 11 through 13 in the statute.
18 And this was -- sorry, I lost my place on my note.
19 Okay. We want to provide -- well, the statute
20 covers -- provide innovative ways to prevent
21 misclassification through distributing educational
22 materials and clarifying the difference between an
23 independent contractor and employee.

24 Also, in 12, methods of public
25 awareness. And then in 13 was to look at any

1 other issues. And the committee's response was,
2 of course, after we come up with a legal standard
3 definition of "employee," clarified for everyone,
4 we want to continue in educating the employer and
5 employee by various low-cost measures.

6 One of the things we were thinking of
7 is we have a licensing exam with our contractors
8 board and add this as a test question, as part of
9 the exam, and also add it in the reference manual
10 for their study material. Also, just simply
11 adding it to a question in the application in our
12 home improvement and contractor's application. We
13 will ask a lot of questions that refer to the law
14 just to get them to look at it and say yes, no, I
15 understand. And so we want to add that in there.

16 We also want to create a fact sheet
17 for the employee and anyone they hire similar to
18 the employment package with the W-2 form. This
19 way, you know, they'll have it right there. They
20 can't just say I don't understand. They'll have
21 something to go back. Also, see about getting
22 TOSHA postings, putting the employee
23 misclassification -- see if it can be placed on
24 there as well.

25 The other thing was, of course, the

1 fraud detection software and looking at the cost
2 of this. And the committee had asked about
3 getting a demo of the fraud detection software,
4 and then the next thing you know -- we had it on
5 July 16th, so we didn't -- we didn't even have to
6 go that far to ask for the demo, and we got that
7 from the three vendors.

8 I think that's the end of it. It's just
9 right now we've got our task -- getting ready to
10 do our task assignments and our timelines and to
11 get ready to develop these policies and
12 recommendations to the task force at the next
13 meeting.

14 MS. JEFFERSON: Do you-all
15 have any questions?

16 (No verbal response.)

17 MS. JEFFERSON: Okay. We
18 don't have any questions. Thank you. Very
19 informative. I appreciate that.

20 Before we move on, I'd like to -- I
21 know we talked a great deal about the exemption
22 registry. We mentioned that a few times. There
23 was a change in the law that has affected the
24 exemption registry, and Nathan Burton is familiar
25 with that.

1 Nathan, can you speak to us on that?

2 MR. BURTON: Thanks. The
3 change will take effect January 1, 2013. Mike
4 referred to it earlier. It will reduce the
5 registration and renewal fees for individuals who
6 neither currently are listed on the exemption
7 registry or applied with us on the exemption
8 registry. It will cut the fees to \$100 for a
9 nonlicensed contractor and \$50 for a licensed
10 contractor. And that will apply for new
11 applications received on or after that date as
12 well as renewals that come due on or after
13 January 1, 2013.

14 MS. JEFFERSON: Thank you. Do
15 you-all have any questions about the new fees, the
16 changes on the law?

17 (No verbal response.)

18 MS. JEFFERSON: And the reason
19 that I wanted to mention that is because that's
20 going to affect our budget, our bottom-line
21 finances. Money is available for us to do what we
22 want to do. We're looking at this anti-fraud
23 system. We're looking at the possibility of more
24 employees, administrative costs. And we do have
25 to take those things into consideration, so I

1 wanted to mention that or have Nathan mention that
2 for me.

3 Thank you, Nathan.

4 Next on the agenda is the committee
5 report for education. Lynn Ivanick is the chair.

6 MS. IVANICK: Thank you. The
7 education committee met June 27 for the purpose of
8 reviewing the same statute that's been referred to
9 by the other committees. The difference is, with
10 the education committee, we didn't have any
11 responsibilities with respect to the first section
12 of 919 last year, so we already sort of dealt with
13 the second half. And again, this year, we dealt
14 with the second half, primarily Sections 11
15 through 13, which directly affect us and which
16 we're responsible for.

17 We went through numerous
18 brainstorming sessions, as Carolyn mentioned
19 earlier in hers, and the first thing that came to
20 mind is we need more people on the education
21 committee. So if anyone in the audience or anyone
22 knows anyone who would like to be on the
23 committee, we would welcome additional members,
24 especially anyone with media experience or that
25 particular type of knowledge.

1 I sent out a request to the advisory
2 council on workers' comp membership, and, also,
3 there's a rather large group of individuals on an
4 interested parties list, trying to solicit some
5 additional members. And I have had at least one
6 response. So we do have a new member. Bill
7 Calhoun, I think, will be joining the educational
8 committee. So, like I said, if you know of
9 anyone, we would welcome the additional brain
10 power.

11 The website, as our chair mentioned,
12 is up and running. It is in English. The tip
13 form is on there, the 800 number is on there, and
14 we are having responses. We've talked about this
15 before. English is lovely, but we really need to
16 have it translated into Spanish if not additional
17 languages.

18 I realize now that our budget is cut
19 in half, essentially, so it's probably not the
20 best time to be asking for these things. But we
21 have estimates on translating the website and the
22 brochure into Spanish and other languages. And I
23 think we, as a task force, seriously have to
24 consider formally asking for the funding to do at
25 least the Spanish. I think we heard loud and

1 clear that with the limited funds, investigators
2 needed to be where we focused that money and that
3 we were not necessarily interested in a public
4 awareness campaign at this time because of
5 funding. But I think the very minimum would be
6 translating into Spanish, because I think we're
7 seeing that a lot of the employees that are
8 affected by this are Spanish-speaking, and I think
9 we would go a long way toward finding the problem
10 if we did that.

11 So it's going to be one of our
12 requests, additional people, and the money to
13 translate both the brochure and the website into
14 Spanish.

15 That public awareness campaign, we
16 came up with four different estimates, and as you
17 would expect, they range from \$91,000 to \$351,000,
18 which means you have, you know, a little coverage
19 or you have a lot of coverage. And as the price
20 increases, the people that we reach will increase,
21 et cetera. We know that. I don't think we have
22 the money for that right now. I think that was
23 made abundantly clear, but it's there for when we
24 want to do it.

25 And the people who are offering the

1 services are ready, willing, and able to come here
2 and speak to us at any time. We think that that's
3 something that we're ready for.

4 Additionally, I spoke to Jeff Garner,
5 who our Chair mentioned previously, out of
6 Maryland. Actually -- excuse me. I didn't speak
7 to him. I spoke to his assistant in the outreach
8 program there, and I asked for some ideas and some
9 assistance with what was working for them. And
10 she informed me that it wasn't. And so I asked,
11 well, how about if you tell me what isn't working
12 so we don't make the same mistakes and maybe we
13 can jump over those things. And so she did have
14 some ideas.

15 She said they had sent out letters to
16 flooring and carpet contractors for audit purposes
17 and that that didn't work. She said they
18 personally had gone through six data bases; that
19 didn't work. So we may want to contact and find
20 out the specifics of what those data bases were so
21 we don't waste our time as well. She said that
22 their initial website wasn't what was needed and
23 they've revamped that since Jeff came on.

24 She's very excited now because
25 apparently Jeff Garner has a lot of experience and

1 they're looking forward to what they're going to
2 do in the future. So what they've done recently,
3 very recently, that did work was put card stock,
4 just a little card, in the licensing contractor's
5 mailings. And she said it's just a little card on
6 heavier paper that had the information on it. She
7 said that actually is working.

8 And their future plans are to deal
9 with home improvement contractors, schools, law
10 schools, business schools, board meetings,
11 prevailing wage boards. They have preconstruction
12 meetings, like, I suppose, maybe we do as well.
13 I'm not that familiar with it.

14 She said the best thing they are
15 finding is to piggyback on other resources. If
16 you have other groups that are already going out
17 and talking to whatever group it is, just have
18 somebody come along or add a sentence or two
19 having to do with this misclassification so that
20 people are aware.

21 MS. JEFFERSON: And that's a
22 really good idea. In fact, we've contacted the
23 communications office, and they have
24 representatives going out for career fairs and so
25 forth. And we've asked them -- we've already

1 presented them with the information necessary for
2 them to take out and include in their package.

3 MS. IVANICK: And she sent me
4 the carpenters -- I guess they put together a --
5 it must be Matthew -- he's put together a YouTube
6 video that's out there. It's about an 11-minute
7 video. It's very good. And they have it on their
8 website, and I was going to see if they would give
9 us permission. And then once we look at it at our
10 next meeting, if we all wanted to put that on the
11 website, we might do that.

12 It was very well explained, the
13 misclassification issue, and the problem of the
14 injured worker or the unemployed worker who is not
15 entitled to unemployment comp. So it was actually
16 very good.

17 And she also pointed us to
18 Missouri's, Colorado's, and Connecticut's
19 websites, to take a look at those, and I haven't
20 had an opportunity to delve into that too far so
21 far.

22 Jeannie, I forgot to ask you, did we
23 get an estimate for the brochures from the general
24 services --

25 MS. TALTON: No.

1 MS. IVANICK: For our trifold,
2 color brochure, which would be hopefully
3 translated into Spanish, the general services
4 division, we're going to look into getting an
5 estimate based on 2,000 copies and 4,000 copies,
6 and we'll hopefully have that for the next
7 meeting.

8 Also, I was going to ask -- and I
9 dealt with this at the break. I was going to ask
10 that we be permitted to attend the round table of
11 the investigators so that we could get an idea of
12 what's really happening in realtime. But
13 understandably, they're going to keep that in a
14 private situation, and our Chair is going to let
15 me know what issues we need to deal with directly.

16 MS. JEFFERSON: Right. And
17 it's not that it's private, but it's an
18 opportunity for the auditors and investigators to
19 get together and share their ideas. And I'm not
20 really sure if they'll be willing to share as
21 much --

22 MS. IVANICK: I agree.

23 MS. JEFFERSON: -- if we have
24 other people coming in.

25 MS. IVANICK: I agree. But if

1 I could just get the information from them, as far
2 as where we need to be focusing our attention,
3 that will be really helpful.

4 In the report, you will see quite a
5 few places where we're thinking about advertising
6 -- "advertising" isn't the right word -- but
7 communicating about employee misclassification,
8 and we have potential sources of cross-agency
9 education training, speaking and disseminating
10 published information at business conventions, the
11 things that Joe Clan (phonetic) out of Maryland
12 mentioned as well, tax lawyers, employment
13 lawyers, Bar associations. If we could just get
14 in there, in their meetings, and have two minutes
15 of their time -- literally, two minutes would take
16 care of it.

17 And so it's something to look into,
18 something maybe where we can hand out those
19 brochures and have those available in their little
20 packets that they did for conventions and things
21 of that nature, college and business and
22 entrepreneurial classes and meetings.

23 We have Que Pasa Nashville here, and
24 one of our committee members is bilingual and she
25 is associated with those people who actually run

1 the public service announcements. And they said
2 that she can come and have a public service
3 announcement for free, no charge. So that's very
4 he helpful. So we need to decide exactly what we
5 want to have said there. So that would be very
6 helpful.

7 MS. JEFFERSON: And I have a
8 suggestion. I was thinking about this, Lynn, as
9 you were talking. I know you said that your
10 committee needs more members, and Dan had talked
11 about some of those -- well, some ideas earlier in
12 his report. Is it possible for you-all to
13 collaborate? Since you have such a small group,
14 is it possible for you-all to collaborate and
15 maybe attend the legal committee meetings?

16 MS. IVANICK: That would be
17 fine with us.

18 MS. JEFFERSON: Would that
19 be --

20 MR. BAILEY: That's fine.

21 MS. JEFFERSON: Okay. Great.
22 Because that may be another option for you.

23 MS. IVANICK: As far as the
24 translation services, the actual estimates are
25 \$275 for the brochure to \$500 for the brochure,

1 depending on which language we're talking about.
2 The 275 was for Spanish, but that was last year's
3 estimate. And I didn't ask them to update it
4 because I thought, well, how many times am I going
5 to do that.

6 So let's say, you know, \$500 to
7 translate the brochure. They have a basic rate of
8 160 for each project, to get the project together.
9 And then it's a certain number of words. And so
10 taking that, they've never given us a website
11 estimate, but it would probably be somewhere
12 around \$3,700, is what we're guessing.

13 So I don't know if this is the right
14 time to say can we have a motion to make a formal
15 request for funding. I don't know if because of
16 the change in the law, in having the Fund, is --

17 MS. JEFFERSON: And Nathan can
18 probably speak on that. I know the last meeting
19 he was very adamant that we take a look at what we
20 need, put it on paper, and then bring it back.
21 Because we need to actually get some feedback.
22 We're waiting to get feedback from the legislative
23 committees as to what we can do and what we can't
24 do.

25 So I would suggest, maybe in the next

1 reports, next month, to just bring in an itemized
2 list of what you need. In the meantime, I'll talk
3 with Nathan.

4 MR. BURTON: Well, what we
5 really need to talk about -- I can give you the
6 revenue picture from my perspective. But that's
7 not a complete picture. I think what we need to
8 do -- I know our Secretary of State's physical
9 staff and the Department of Labor's physical staff
10 have talked before -- are talking on a monthly
11 basis. There's some recurring expenditures that
12 we have that you-all reimburse us for, and we have
13 a process for that.

14 But I think what we need to do, I
15 think what -- the information that the committee
16 needs or the task force needs is what do you have
17 available, because there's some that's already
18 been appropriated and spent; what's the Fund
19 balance. And the best that we can -- I can try to
20 come up with some kind of estimate, but my degree
21 of confidence in it will be low because just as
22 when we started this, none of us had an idea of
23 how many people would register -- would apply to
24 be on the registry. I can't, then, sit here and
25 say, well, based on the prior history, you can

1 expect that many, then, to register up and above
2 that. I think that would not be wise.

3 So we can come up and say, well, here
4 is how many we think will renew based on active
5 registrations we have. We can come up with a
6 ballpark of what we think new registrations will
7 be.

8 MS. JEFFERSON: And then we
9 have to take into consideration that we're
10 reducing --

11 MR. BURTON: That's right.

12 MS. JEFFERSON: -- the fees.

13 MR. BURTON: And we can factor
14 that in. We can factor based on renewals, how
15 much revenue that will generate at the new fee.
16 But I think we've got to be proven in how we look
17 at what the Fund balance is and what
18 recommendations we make, because, really, that's
19 also, then, going to have to go in -- it's going
20 to have to come through labor and the budget
21 cycle, which is now. So I think that's something
22 we've got to keep in mind as we're having these
23 discussions.

24 MS. JEFFERSON: Great. And we
25 can take care of finding out the Fund balance.

1 We've been in touch with Robbie Hunter, and she's
2 provided us information and kept us up to date as
3 to the Fund balance and other information.

4 So at the next meeting, I'll have
5 more accurate information to let you-all know
6 exactly what's available. And then we can go from
7 there. If you bring your itemized list for what
8 you need, we'll take a look at it. There are no
9 guarantees.

10 As Nathan mentioned, the commissioner
11 for the Tennessee Department of Labor is the
12 person who will determine whether or not that
13 money will be appropriated, as far as the way that
14 I understand it.

15 Is that correct, Abbie?

16 MS. HUDGENS: Well, there's a
17 process that we have to go through.

18 MS. JEFFERSON: Okay.

19 MS. HUDGENS: Nathan is right.
20 It is the budget time, so -- and we have been in
21 contact with our fiscal officer, Mark Jones, about
22 this.

23 MS. IVANICK: Well, then, if I
24 could just maybe get some feedback from the task
25 force today. Do you want me, on that proposal, to

1 put the public service campaign at all or just
2 deal with the Spanish website brochure or do
3 Spanish and Kurdish? Or what do you guys think?
4 I don't -- I mean, is it one of those things where
5 you need to ask for the moon so that you might get
6 something down here (indicating), or what should
7 we do?

8 MS. HUDGENS: Kim, if I --

9 MS. JEFFERSON: Sure.

10 MS. HUDGENS: I think it would
11 be appropriate to say what you see your needs are
12 and put them in priority order and have a
13 realistic expectation about what might happen.
14 But we need to know. We don't know what the
15 future may hold. It would go in with other things
16 we're looking at. So we really need to know what
17 the big picture is if you don't mind doing that.

18 MS. IVANICK: No, that's okay.
19 I just wanted to know should I make it real little
20 so we may get it passed, or should I do this and
21 we'll get a little bit. Okay. Okay. I'll just
22 put them in maybe priority order.

23 MS. HUDGENS: That's the most
24 important thing so we know where it is that you
25 want -- or the thing that you think will bring the

1 most value as far as results in the
2 misclassification project.

3 MS. IVANICK: Do we have a
4 consensus on the task force that maybe Spanish is
5 what we need to focus on? Did I hear that?

6 MS. JEFFERSON: Yes.

7 MR. BAILEY: I think so.

8 MS. IVANICK: And just deal
9 with that right now, make that a priority? Okay.
10 Other than that, we've got, like I
11 said, the public awareness campaign. We've got
12 the other places we're going to be looking. We've
13 got the estimates together. We're kind of ready
14 to go forward. We just need direction and
15 funding, so I'll get all of that together and make
16 sure it's very nice and neat and with perfect
17 numbers and get the updated estimates. Then, at
18 the next meeting, we'll have that for you to
19 present.

20 MS. JEFFERSON: Great. Thank
21 you very much. Do you-all have any questions?
22 One question.

23 Mr. Hale?

24 MR. HALE: Google Docs, if you
25 sign up -- if you've got a Google account, just

1 sign up for that, and you can do a translate.
2 And, I mean, it's got every language in the world.
3 And it will do it on the fly. And --

4 MS. IVANICK: Would it do the
5 website?

6 MR. HALE: Well, if you've
7 got, like, "contact us," you can do a cut and
8 paste and put "contact us" and translate it and it
9 says whatever in Pakistan or whatever. You can do
10 Spanish or whatever. It does translations. It's
11 unbelievable.

12 MS. IVANICK: And this is free
13 of charge?

14 MR. HALE: Yes. And if you've
15 got -- like, if you've got your brochure in
16 Microsoft Word, okay, you can cut and paste it
17 into a Google Doc, and then it translates and it's
18 done.

19 I did a PowerPoint translation, a
20 34-minute PowerPoint translation (indicating),
21 that fast.

22 MS. IVANICK: And do we trust
23 it?

24 MR. HALE: Well, you've got
25 your --

1 MS. HUDGENS: You keep the
2 money in for the translation.

3 MS. IVANICK: Yeah, just in
4 case.

5 MR. HALE: Yes, that's right.
6 Abbie's correct there. But if you've got
7 someone's property, there you go. You just say,
8 hey, is this in context? And maybe they would
9 say, hey, I think I might say it a different way.
10 It's just a great resource and it's free.

11 MS. HUDGENS: We just need to
12 have somebody that we can fall back on if they
13 make a mistake.

14 MS. IVANICK: Or even have
15 them review it. Maybe it would be a little less
16 expensive for them to review.

17 MS. HUDGENS: That's a good
18 idea.

19 MS. JEFFERSON: And we also
20 have access to the Foreign Language Institute with
21 the State.

22 MS. IVANICK: That's who the
23 estimates are from. And they're very reasonable.

24 MS. JEFFERSON: Okay.

25 MS. IVANICK: I think they

1 are. I think they're very reasonable.

2 MS. JEFFERSON: Very good.

3 All right.

4 And Dr. Canak, I believe you had a
5 question or a comment.

6 DR. CANAK: Well, listening to
7 you, and I'm not offering to be on the committee,
8 but in reaching out to the Latino community and
9 other immigrant communities -- here in Middle
10 Tennessee, we have had a census of immigrant
11 community associations. And so by hitting the
12 leadership of those associations, almost all of
13 whom will be very fluent in English and also know
14 their communities very well, and also working with
15 many of the churches who have outreach programs to
16 immigrant communities, these would be two ways not
17 to have to translate documents but be able to
18 distribute them to people who are really in touch
19 with these populations, whether it's Kurdish,
20 Somali, beyond the Latino population, Egyptian,
21 whatever we have --

22 MS. IVANICK: So we could give
23 it to them in English and they would take care of
24 it?

25 DR. CANAK: And they would --

1 yes, because they have an interest in not having
2 people exploited and abused in the workplace. And
3 I think that those would be very good languages
4 because it wouldn't just be a one-way street.
5 That is, we could also -- they would have an
6 interest in informing their people to communicate
7 back to us about issues in the workplace. So we
8 could establish that there's this interest.

9 That whole infrastructure of social
10 organization with these communities across the
11 state already exists and is not hard to discover.
12 They're not hiding.

13 And as I say, here in Middle
14 Tennessee, Vanderbilt did a well-funded census,
15 and so we can tap into that.

16 MS. JEFFERSON: Great. Thank
17 you. Very informative.

18 The final report is from the
19 enforcement committee. Martha Campbell is the
20 chair.

21 MS. CAMPBELL: Yes. I'm
22 Martha Campbell. Our committee met on June 27th,
23 2012. I was present. From the attorney general's
24 office, Alex Rieger, who is here with me today,
25 Derek Jumper, and Josh Baker from the general

1 civil division. And I might mention that Josh
2 Baker is soon not to be in the attorney general's
3 office and of the Department of Labor -- you're
4 getting a good one, Abbie.

5 MS. HUDGENS: Thank you. I
6 appreciate it.

7 MS. CAMPBELL: But in any
8 event, he was there. And it's not in the report
9 and I'm going to apologize. George Bell from the
10 enforcement division of the attorney general's
11 office was also intervening, and I failed to
12 include that in the report. And George is back
13 there. I want to apologize to him.

14 From the Department of Labor, we had
15 Norman Auffhammer, John Basford, and Blake Alford.
16 We had James Milam from the Davidson County's
17 District Attorney's Office, and Jason Locke from
18 the TBI. So we had -- I think everyone on our
19 committee was present.

20 We were to look at, in the code,
21 Parts 7, 10, and 13. And we kind of distilled
22 that into two areas. We looked at and discussed
23 pooling resources between state agencies to
24 investigate incidents of employee
25 misclassification and statutory changes necessary,

1 if any, to existing law to facilitate enforcement.

2 And before we -- we had to have a
3 discussion before we came up with our
4 recommendations as well. I'll tell you all the
5 things that we discussed and kind of brought to
6 the table. And I assume these are all still
7 correct numbers. And if they are incorrect,
8 someone can correct me. But we had discussed the
9 fact that the Department of Labor has seven
10 investigators, but they do not have law
11 enforcement powers.

12 The district attorney's office has
13 investigators with law enforcement powers, but
14 they are not specifically trained in the
15 investigation of labor-related issues.

16 The TBI obviously has investigators,
17 but there is a specific code section that governs
18 the jurisdiction, basically, of the TBI to
19 investigate, and it's a specific limited
20 jurisdiction; however, there is a provision in
21 there that the district attorney general of the
22 judicial district may request the assistance of
23 the TBI, and that can be given.

24 So that's the way the TBI can get
25 involved with an investigation, at the request of

1 the district attorney. But absent that referral,
2 they can't get involved in investigation of
3 misclassification.

4 The Department of Revenue
5 Unemployment Insurance Division has no
6 investigators but they have auditors.

7 MR. BAILEY: Martha, I'm not
8 familiar with the Department of Revenue having --
9 we have unemployment insurance auditors in our
10 employment security division, but I don't think
11 the Department of Revenue has --

12 MS. CAMPBELL: That may be
13 what they're referring to.

14 MR. BAILEY: And they're
15 called auditors in the fact that they're very much
16 like investigators -- John, you've worked with
17 them -- so I think that's just more of a
18 difference in title. They're very much like
19 investigators.

20 MS. CAMPBELL: Okay. But
21 they're more familiar with the type of thing that
22 needs to be investigated with the employee
23 misclassification.

24 MR. BAILEY: Right.

25 MS. CAMPBELL: Is that not so?

1 MR. BAILEY: Yes.

2 MS. CAMPBELL: But under the
3 current process, I understand that the Department
4 of Labor can refer a case to the district
5 attorney, and then the district attorney can then
6 request the TBI to investigate. But due to
7 resource constraints, not all claims can be
8 investigated by the TBI. But I think some large
9 or more significant claims could be.

10 Am I not incorrect, Jason?

11 MR. LOCKE: That's correct.

12 MS. JEFFERSON: Have you-all
13 considered any thresholds?

14 MS. CAMPBELL: Well, we did
15 talk about that. We'll get to that in a minute.
16 I'll get to that in a minute. Yes, we think there
17 should be kind of a -- although we didn't hash out
18 exactly what it should be, we did discuss that
19 there should be thresholds.

20 We talked about how -- and I guess
21 it's -- the unemployment insurance auditors have
22 access to the 1099 forms, and the Department of
23 Labor has access to something I'm not really very
24 familiar with, but TRUMP accounts. And in talking
25 to Blake Alford, he told me that the TRUMP

1 accounts -- well, that stands for Tennessee Remote
2 Update Management Package. And they are basically
3 the reports that employers have to turn in for
4 unemployment compensation. But apparently there's
5 a way that someone, the auditors or investigators,
6 can look and compare those -- that information.

7 MS. JEFFERSON: They include
8 the amount of payroll and the number of employees.

9 MS. CAMPBELL: Right. And
10 that --

11 MS. JEFFERSON: And that's the
12 information reported by the employer.

13 MS. CAMPBELL: -- may be the
14 way to investigate, by comparing those documents.

15 MR. BAILEY: Those are
16 quarterly reports.

17 MS. CAMPBELL: Right.
18 Incidents of probable employee misclassification
19 cases warranting further investigation can be
20 identified by comparing 1099 forms to employer
21 TRUMP accounts. So that's one method.

22 And we discussed the fact that
23 Department of Labor investigators have a good
24 relationship with the auditors. And that's a good
25 thing. We also discussed the fact that the

1 Department of Labor is not presently in a position
2 to take on criminal investigations. I understand
3 that's correct. If I'm wrong, someone correct me
4 on that.

5 But those are kind of some of the
6 background things we discussed, and when looking
7 at recommendations, we thought that we should
8 continue the current referral process for criminal
9 investigations. And that's labor referring to the
10 DA, and then DA maybe to the TBI, getting the TBI
11 involved.

12 As far as your question, Kim, we did
13 think that -- and this is something we may need to
14 look into more, but we did have a recommendation
15 that we establish a threshold for criminal
16 investigation of misclassification and a threshold
17 to be flexible enough to discourage lesser
18 criminal activity but specific enough to give
19 guidance to the referring investigator when
20 something should be pushed into the criminal realm
21 rather than just a civil penalty. And that may be
22 something we need to look at in more detail.

23 We are not going to recommend that state
24 law change the statute with regard to TBI on
25 giving them the specific duty of investigating

1 employee misclassification due to resource
2 limitations. And I think Jason was very clear on
3 that, that the current method is working well
4 enough.

5 We also think that we should research
6 the possibility of giving limited law enforcement
7 powers to some Department of Labor investigators
8 with possible TBI oversight.

9 We recommended that the Department of
10 Labor investigators and what I call auditors
11 should continue in their cooperative enforcement
12 relationship and perhaps expand that relationship.

13 And we also recommended that all
14 contractors entering into a construction contract
15 with the State should be sent a warning letter or
16 have specific language required in the contract
17 concerning the penalties for using misclassified
18 workers on the job site.

19 So those were our recommendations. And
20 I did not -- I could not attend the vendor
21 meeting, but Alex did. And so I've asked Alex if
22 he would mind making a few comments on his
23 thoughts on the vendor meeting.

24 MR. RIEGER: Absolutely. Do I
25 need a microphone? I'll just speak up.

1 At the vendor meeting, we -- I
2 unfortunately missed the Risk Metrics presentation
3 as well as about half of the public outreach
4 presentation. But what struck me is that, you
5 know, in terms of a software program, what we need
6 is we either need up-to-date information about
7 coverage for these contractors and employees and
8 independent contractors that are alleged to be
9 independent contractors, or we need -- if we can't
10 get that up-to-date information, we need a
11 software program that can be used to create a
12 predictive model that will at least guide our
13 investigators in a way that smartly uses and
14 efficiently uses their resources.

15 The last presentation, which was
16 CLEAR by Thomson Reuters, I don't think I would
17 recommend that. But the information tracking was
18 excellent. It's a good device to find business
19 entities, their employees, who owns them, their
20 aliases and so forth. But it's very limited to
21 only being useful when you already have reason to
22 suspect someone.

23 It will not tell us about insurance
24 coverage. It will not tell us if they're active
25 policies. It can't generate a list of suspects.

1 And for that reason, I can't recommend that.

2 For Insurance Technology, to echo
3 Dan's sentiment, I like the cost of free, and I do
4 like shopping Tennessee. There are some concerns.
5 Number 1, can the information be made up to date?
6 We were given a demo by Mr. Hale and where he
7 could search policy coverage status. The question
8 is can we get that to be up to date? How close
9 can we get the lag between the current date and
10 the latest active policy we know about? How
11 current can we get that information? Will it
12 require additional information and data base
13 access for it to be functional and who does that?

14 Failing that, would it be more
15 useful, if we can't get that up-to-date
16 information with data base integration, could we
17 instead use prior information that's not as up to
18 date and perhaps use Insurance Technology to make
19 a predictive model, a model that says, you know,
20 while we don't have absolute, to-the-day, current
21 policy coverage information, in the past, what
22 employers have basically been misclassifying, and
23 can we use that to compile a large data base of
24 suspects that we can check and recheck?

25 As for the public option, as I think

1 Kim already said, we do have a tip line and a
2 form. And my thought on that is before we go
3 spend any large amounts of money -- which I
4 understand that, you know, completing the
5 brochures is very inexpensive and it has a very,
6 very good cost-to-effect ratio -- why don't we see
7 where the tips are coming from in the tip line.
8 Why don't we see. If we look at the tip line and
9 say, well, all of the information we're getting is
10 from businesses, why don't we spend our money and
11 funding that we would have to target other
12 businesses to essentially get them to, for lack of
13 a better word, inform on those employers that are
14 misclassifying, and try to just be a little more
15 efficient with our resources in that way, find out
16 what works and what -- where we're most likely to
17 have success before we spend the money and try to
18 fire off a shot in the dark.

19 That's it.

20 MS. CAMPBELL: That's our
21 report.

22 MS. JEFFERSON: Very good.
23 Thank you-all so much. Do you-all have any
24 questions?

25 MR. BAILEY: I would just like

1 to echo a little bit on that last point. That's
2 probably a pretty -- very good point because
3 we're -- I think we're kind of assuming that the
4 majority of tips will come from employees. And
5 I'm not so sure that's a correct assumption,
6 because employees, particularly in the Latino
7 community, which is where we see this go on a lot,
8 are pretty reluctant to tell on their employer,
9 even if they know they're doing something wrong.

10 I think probably a better chance of
11 reliable tips is probably going to come from
12 compliant contractors once they feel like
13 something will be done about it. And so that may
14 be a very good point, that to put a lot of money
15 into trying to reach the employee may be a wrong
16 use of funds.

17 The other thing was on the state
18 contracts. A few years ago, because of this issue
19 on state contracts and us not getting unemployment
20 insurance premiums collected, we worked through
21 the building commission to amend the state
22 contract on the state building project.

23 I don't think it -- I don't think it
24 happened with the TDOT projects. But to put
25 language in that contract, drawing their attention

1 to the fact that under the employment security
2 statutes, they were required to notify our
3 department 30 days prior to paying the last
4 payment to the subcontractor. There are things of
5 that nature, which had never been done, really,
6 until we put that in the contract and started
7 bringing it to the contractor's attention. And
8 now our unemployment auditors do get notified on a
9 regular basis.

10 So to try to do something with state
11 contracts, we may need to involve people from the
12 state building commission and TDOT either at our
13 meetings or in our -- you know, to -- and work
14 through them. Because they were amenable to
15 changing the contract once they understood what
16 our problem was.

17 And there is a process, but you know
18 with the state government, there is always a
19 process. But you can amend that contract.

20 MS. JEFFERSON: Well, I think
21 that's a good idea. I think the more people who
22 are involved, the more stake holders we have, the
23 better off we are, because if we don't talk with
24 them now, then we may have difficulty down the
25 road. So we do want to bring in all stake

1 holders, everyone who has an interest in what
2 we're doing.

3 And I just want to -- I know we
4 have -- in the best interest of time and stay on
5 point, at this time, as we go forth in working on
6 the 2013 annual report, I do want to start
7 meetings on time in the future and also end them
8 on time.

9 So I just want to end with these two
10 things. What we're trying to do, what we're
11 hoping to see next is feedback for the 2012 Annual
12 Report, because that will help us move forward.
13 Until we get feedback on that, we really can't
14 move forward. So that's one of the things that we
15 have actually in the pipeline.

16 Karen is here today. She's the
17 legislative liaison for the Department, one of the
18 legislative liaisons. And she's actually been
19 instrumental in trying to help us to arrange a
20 meeting with the chairs of the legislative
21 committees so that we can find out what we need to
22 do next. We really can't -- we're at a standstill
23 at this particular point.

24 But Karen is working on that for us.
25 In fact, we had a meeting scheduled. I believe

1 the meeting was scheduled for June the 26th -- it
2 that right -- June the 26th, but Representative
3 Eldridge had an accident. He injured his wrist,
4 so we couldn't meet with him at that time. But we
5 hope to have a meeting at some point in the
6 future, and hopefully we'll meet with both Senator
7 Johnson and Representative Eldridge.

8 And the second thing is that the
9 committees' chairs will continue to hold meetings,
10 study the issues. They'll continue to do that,
11 engage all the committee members, reach out to
12 stake holders and other interested parties so that
13 we can get the solutions that we need. Because
14 the last report was based on coming up with ideas,
15 creative ideas. But the 2013 report will be based
16 on solutions. We want to take a look at what
17 we've actually done since the first report.

18 And so that's pretty much where we
19 are. If you-all don't have any --

20 MR. BROWN: Yes. Public
21 comments? Is that okay?

22 MS. JEFFERSON: Actually,
23 let's take a look at the time.

24 MR. BROWN: I can ask you some
25 questions, maybe, and you don't have to go into

1 them.

2 MS. JEFFERSON: Sure.

3 MR. BROWN: If you want to
4 preview some questions for some leaders in the
5 room. And I really appreciate everyone's work and
6 time. Jim Brown with NFIB.

7 Is there any data that shows what's
8 happening when the inspectors turn over a case to
9 the DAs?

10 MS. JEFFERSON: Actually, we
11 have not turned over any information to the DAs
12 because we were waiting for --

13 MR. BROWN: Over the last five
14 years, there's not been one referral from an
15 inspector?

16 MS. JEFFERSON: Yes. Yes, we
17 have. In the past, we have. Before the new law
18 went into effect about employee misclassification,
19 cases were referred.

20 MR. BROWN: Because the way --
21 my understanding of the law is that's where the
22 rubber meets the road, is -- that's where --
23 that's where you either pursue or you don't
24 pursue; is that correct?

25 MS. JEFFERSON: Well,

1 actually, we're taking a look at that. We're
2 actually revamping, Jim. Prior to the change in
3 the law, we were just kind of winging it so to
4 speak. We were referring cases to the DA's
5 office.

6 But now that we have a task force,
7 we're trying to set up proper procedures, and
8 we're trying to deal with James Milam and also
9 TBI, Jason Locke, to find out what they want us to
10 send them and what they want us to refer to them.
11 So hopefully, working under the new direction of
12 Martha Campbell, we'll have some thresholds in
13 place. We'll get a better understanding of what
14 we need to refer. We're just not there yet.
15 We're still working on it.

16 MR. BROWN: I don't want to
17 speak for Bob Pitts, but it just sounds like in
18 the past that it's been a hot potato when that
19 occurs. And I think that's where the rubber meets
20 the road here with enforcement, is making sure the
21 general assembly and the administration
22 understands -- both understand where the problem
23 is.

24 This is someone who's in agreement
25 with some of my friends in the room, that that's

1 really a big part of this law, is to make sure
2 that there's some pursuit of folks who are
3 misclassified. That's a big part of this law.

4 So that's just one takeaway, is -- I
5 just hope that's an area where there's honing in
6 and there's data for the general assembly when we
7 hear of cases in Cookeville and Memphis, not just
8 the anecdotal information but maybe some of the
9 numbers. So if you-all are deciding where to go
10 forward, that you have that data for Chairman
11 Johnson and Chairman Eldridge and those folks,
12 because I think that's an important piece of this.

13 The other thing was just for Mike and
14 Dan --

15 MS. JEFFERSON: And before you
16 move on --

17 MR. BROWN: Yeah.

18 MS. JEFFERSON: -- let me get
19 Jim Milam and Jason Locke an opportunity to
20 respond to that.

21 MR. BAILEY: If I could, also,
22 I'm only aware in the past seven or eight years of
23 one prosecution for this. And that was by our
24 current Commissioner of Safety, Bill Gibbons.

25 MR. BROWN: In Shelby County?

1 That's all I'm aware of.

2 MR. BAILEY: That's the only
3 one I'm aware of. Now, I know Davidson County's
4 DA's office has taken a look at some cases. I
5 don't want to say -- I don't want to speak for
6 them.

7 MR. MILAM: Well, I can really
8 answer that quickly. We had two referrals in the
9 last, I guess, year and a half from the
10 carpenters. One of those has been indicted and
11 has a trial date. The defendant did not want to
12 plead guilty.

13 The other one was not pursued because
14 of some witness problems. The witness who was
15 believed to be legal turned out to be illegal,
16 which really created a problem. And then I think
17 there might have been one other case that we've
18 seen recently, but it hasn't been completed yet.

19 MR. BROWN: And that's one
20 jurisdiction?

21 MR. MILAM: That's just
22 Davidson County.

23 MR. BROWN: Correct.

24 MR. MILAM: And I did hear
25 about the one in Shelby County. I don't know if

1 there have been any others in Shelby County. I
2 know Bill Bright, down there, is the one
3 prosecuting that.

4 MR. BAILEY: I'm not aware of
5 any others.

6 MR. BROWN: Thank you. The
7 other piece of this -- and Mike and Kim and I
8 talked about this in the break, but I heard a lot
9 about cost of -- in full disclosure, Kevin Hale is
10 an NFIB member, as is the Boca Raton member. Both
11 are members.

12 I really liked Dan's report and
13 Mike's report. I really agreed with everything
14 you said about the vendor presentations, but it
15 doesn't seem that there's been some discussion
16 about cost and efficacy, I think is where --
17 before the State spends some of this money that's
18 coming in, is to get a really good understanding
19 of the efficacy.

20 Kim and I were talking -- Kim
21 Adkins -- about Washington, Louisiana, and maybe
22 some of the folks at this table, as well as the
23 inspectors in Tennessee, talking to inspectors in
24 those states to find out not just the cost but how
25 effective it's been, find out how effective that

1 vendor has been.

2 And also, the presentation from
3 Mr. McCarthy, he did a good job and his software
4 was good. It seemed to be good. But he also
5 acknowledged that there are holes in the software.
6 It's not foolproof or it doesn't hit 100 percent.
7 But maybe to engage him and anyone else who bids
8 on the efficacy of -- the actual efficacy of this
9 program in other states and before determining
10 what kind of monies to spend and maybe even
11 encourage some of the vendors to enter into a
12 trial period with the inspectors here in
13 Tennessee, so that, you know, they get to actually
14 see if this is working or not before you enter
15 into a longer-term arrangement. So that's just a
16 thought that we had.

17 And I love Carolyn's idea about
18 educating the folks on the front end with some of
19 the new changes in the law, because that gets your
20 attention from the get-go.

21 One last thing is Abbie and I, we
22 were talking at the vendor meeting, and just a
23 letter going out. Especially for some of your
24 smaller folks that you can't pursue and kind of --
25 when there's a lapse in coverage, if you pick some

1 software and you pick up that there is a lapse in
2 coverage, that letter that goes out -- I see
3 Ashley nodding her head -- kind of gets your
4 attention when it's from the State. That, you
5 know, you just remind. And Abbie and I were
6 talking about potential language. You just remind
7 that person that this is the law. And, you know,
8 that would help with some compliance, just the
9 sheer -- that letter comes in the mailbox,
10 someone's going to say, uh-oh, they're watching
11 us. So just a suggestion.

12 DR. CANAK: Bill Canak from
13 MTSU. Just to respond. We've already identified
14 contact people in Washington and Louisiana, and
15 we're communicating with them about how things are
16 working. And our research and resource committee
17 is going to be gathering information exactly on
18 the issues that are of concern to you.

19 MR. BROWN: I think we're of
20 like mind.

21 DR. CANAK: I think there's a
22 consensus here of that.

23 MS. JEFFERSON: If there are
24 no other questions, then I move that the meeting
25 be adjourned.

1 MS. LAZENBY: Second.

2 MS. JEFFERSON: All in favor?

3 (Affirmative response.)

4 MS. JEFFERSON: We're

5 adjourned.

6 END OF THE PROCEEDINGS.

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1 C E R T I F I C A T E

2 STATE OF TENNESSEE)

3 COUNTY OF WILLIAMSON)

4

5 I, Cassandra M. Beiling, a Notary Public
6 in the State of Tennessee, do hereby certify:

7

8 That the within is a true and accurate
9 transcript of the proceedings taken before the
10 Employee Misclassification Advisory Task Force,
11 Tennessee Department of Labor & Workforce
12 Development, on the 26th day of July, 2012.

13

14 I further certify that I am not related to
15 any of the parties to this action, by blood or
16 marriage, and that I am in no way interested in
17 the outcome of this matter.

18

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand this 8th day of August, 2012.

21

22

23 -----
Cassandra M. Beiling, CCR, LCR# 371
24 Notary Public State at Large
My commission expires: 3/12/2016

25